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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/424,705	06/02/2000	MELVYN LITTLE	35280047US00	8422

, 27194 7590 10/11/2002

HOWREY SIMON ARNOLD & WHITE, LLP
BOX 34
301 RAVENSWOOD AVE.
MENLO PARK, CA 94025

EXAMINER

ROARK, JESSICA H

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 10/11/2002

27

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/424,705

Applicant(s)

LITTLE ET AL.

Examiner

Jessica H. Roark

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 18 September 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-9 and 12-27.

Claim(s) withdrawn from consideration: _____.

Phillip Gambel
PHILLIP GAMBEL, PH.D
PRIMARY EXAMINER
TEL Center 1600
10/10/02

8. ☒ The proposed drawing correction filed on 18 September 2002 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet

Continuation of 2. NOTE: In proposed claim 5, the inclusion of SEQ ID NOS requires new search and consideration of those sequences. In addition, the proposed replacement of the named primers with SEQ ID NOS raises the issue of New Matter.

It is further noted that while the Hawkins-type Declaration appears to be sufficient for the incorporation of the essential subject matter of the primer sequences into the instant specification, the objection with respect to claim 5 that would be addressed by the incorporation by reference was set forth in Paper No. 13; therefore the Declaration is not timely.

Continuation of 3. Applicant's reply, HAD IT BEEN ENTERED, would appear to have overcome the following rejection(s):

Although the Proposed Amendment HAS NOT BEEN ENTERED for the reasons set forth supra, had the proposed amendment been entered, it would appear to have obviated the following rejections and objections of record in Paper No. 19:

- the previous objection to the specification under 37 CFR 1.77 requiring Section Headings;
- the objection to claim 5 for failure to recite sequence identifiers;
- the previous rejections under 35 USC 112, second paragraph;
- the previous rejection under 35 USC 112, first paragraph; and
- the previous rejection under 35 USC 103(a) as being unpatentable over Kroon et al. (of record) in view of Kipriyanov et al. (IDS #4) and Senoo et al. (of record).

It is also noted that IF the translation of the foreign priority document provided by Applicant on 9/18/02 HAD BEEN a certified translation (it was not), the priority document would appear to provide adequate support for the instant claims under 35 USC 112, first paragraph. Thus IF the translation of the foreign priority document filed 9/18/02 had been certified, Kipriyanov et al. (IDS#5) would not be available under 35 USC 102(a) and the rejection of record under 35 USC 102 and 103(a) that rely upon Kipriyanov et al. would no longer apply.

Continuation of 5. does NOT place the application in condition for allowance because:
the proposed amendment has not been entered and the rejections of record therefore stand.

Continuation of 10. Other:
The CRF filed 9/18/02 has been found not to comply. Please see the attached Raw Sequence Listing Error Report.